IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.525 OF 2000

IN

WRIT PETITION NO.601 OF 1998

Dhruba Kumar Changkakoti. ...Appellant.

vs.

1.Travel Corporation of India Ltd. & others. ...Respondents.

Mr.A.D.Shetty with Ms.Rita K. Joshi, for Appellant.

Mr.M.M.Verma with P.N.Shastri, for Respondents.

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 4th August,2007.

P.C.:-

1. By this appeal, the appellant challenges the order passed by the learned Single Judge in

Writ petition no.601 of 1998 dated 16.3.2000. By that order the learned Single Judge has dismissed the writ petition filed by the appellant. The appellant had filed the writ petition challenging the order dated 24.4.1995 passed in Complaint (ULP) no.261 of 1991 by the Labour Court and the judgment and order dated 28.7.1997 passed in the Revision (ULP) no.68 of 1995 by the Industrial Court. The appellant had filed a complaint before the Labour Court making grievance under the Unfair Labour Practices Act about termination of his services. A preliminary objection to the maintainability of the complaint was raised by the Respondents contending that the appellant is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act. Evidence was led by both the sides. After appreciating the evidence on record, both the documentary and oral, the Labour Court held that the appellant has not been able to prove that he was workman within the meaning of Section 2(s) of the Industrial Disputes Act. That finding of the Labour Court was challenged by the appellant

before the Industrial Court. The Industrial Court also has confirmed the order of the Labour Court. Thereafter, a writ petition was filed by the appellant against both the orders. The learned Single Judge after hearing the petition found that the Courts below are justified in recording the findings that the appellant is not a workman and therefore, has dismissed the petition filed by the appellant. The learned Counsel appearing for appellant submits that it was the case of the respondents that the appellant was performing managerial functions and therefore, he was not a workman. According to him, it was also the case of the respondents that the employees were working under the appellant, he had power to sanction leave and he had also power to take disciplinary action against the employees working under him. According to the learned Counsel, all these things have not been proved by documentary or oral evidence by the respondents, and therefore, the Courts below were not justified in recording the finding in favour of the respondents. The learned Counsel also submits

that the documents on which reliance was placed by the Courts below for holding that the appellant was performing managerial functions, does not show that he was performing managerial functions. He submits that even the documentary evidence has been misread by the Courts below and therefore, according to him, there is error apparent on the face of the record and therefore, we should interfere with the orders challenged in the appeal.

2. We have also heard the learned Counsel appearing for respondents. It is true that it was the case of the respondents-management that there were employees working under the appellant, he had power to take disciplinary action against them, but it was also the case of the respondents that the appellant was performing managerial functions. Perusal of the order of the learned Single Judge shows that the learned Single Judge after appreciating the evidence on record and after referring to the law on the point has observed that the petitioner was incharge of

promotion of tourism in Eastern Europe and he was performing a part of the function on behalf of his employer i.e. looking after the business and promoting the same in Eastern Europe. According to the learned Single Judge, therefore, taking overall view of the functions that were performed by the appellant, it can be safely concluded that they were managerial functions and therefore, he cannot be termed as workman. Though there are concurrent findings recorded by the Courts below, at the insistence of the learned Counsel appearing for appellant, we have gone through the documents on the basis of which the findings are recorded. After reading the documents, we find that the findings that have been concurrently recorded by the Courts below are not perverse or impossible. In our opinion, it is possible to reach the conclusion which was reached by the Courts below on the basis of the evidence on record. In our opinion, considering the scope of the jurisdiction of this Court under Clause 15 of the Letters Patent, it would not be appropriate for this Court to disturb the concurrent findings

recorded by the Courts below. The appeal, therefore, fails and is disposed of. No order as to costs.

(D.K.DESHMUKH, J.)

(J.H.BHATIA,J.)